IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 267 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NANDALAL JAIKISHANDAS THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR IQBAL M MALIK for Petitioner

MR BY MANKAD, APP for Respondent No. 1

MR PM DAVE for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 11/10/1999

ORAL JUDGEMENT

Rule. Mr. B.Y.Mankad, learned APP appears and waives service of Rule for Respondent no.1 State and learned Counsel Mr. P.M.Dave, appears and waives service of Rule for respondent no.2. With the consent of the parties, the matter is taken up for final hearing today.

It is submitted by the learned counsel Mr. Shaikh appearing for the petitioner- complainant that the

learned Judicial Magistrate (F.C.), Vadodara has erred in discharging respondent no.2 (original accused) vide his order dated 7.4.1999 passed in Criminal Case No.707/87 in

connection with the offences punishable under sections 409, 420 of the I.P.Code.

Complainant is a businessman having Soda Factory and also doing other business. Respondent no.2 accused was an agent of Life Insurance Corporation (hereinafter referred to as the "LIC"). According to the petitioner, he has taken insurance policy worth Rs. 85,000/ somewhere in the year 1982 through the accused . Both the accused and the complainant belong to same community and town. The permanent address given by the accused to LIC is of the C/o address of the complainant. It is stated that as the accused has failed in paying premium of said policy which was Money Back Policy, his policy lapsed. However, at the request of the accused, he opted to revive the policy and for that purpose, has given two cheques each of Rs. 3000/ on 20.2.1987 and 5.3.1987 respectively. According to the complainant, cheque dated 20.2.1987 was given by the accused to the Shroff who after deducting his discount and commission, encashed the said cheque and the amount of Rs. 3000/ was realised by the accused. Similarly, an amount of Rs. 3000/ was also realised by the accused by depositing another cheque in his account. It is the say of the complainant that as money was not credited in his premium account with LIC, he was obliged to file the complaint.

After examining the complaint, the learned JMFC, Vadodara vide impugned judgment and order dated 7.4.1999, discharged the accused as aforesaid under sec.245(1) of Cr.P.Code.

I have gone through entire judgment and order under challenge. The learned Magistrate has discussed relations between the parties viz. complainant and the accused, and also nature of transactions between the parties. Learned Magistrate has observed that though there were ample opportunity with the complainant to lead evidence, complainant had missed all such opportunities. Complainant was also fastened with the liability of payment of costs on two occasions, but had not cared to summon witnesses who were to be examined on behalf of the complainant side. Learned Magistrate has found that the complainant was interested only in seeing that the accused is tossed between the Court and his day to day routine work. Learned Magistrate has also properly appreciated cross-examination of the complainant and the nature of allegations made by the complainant in the complaint as well as in the deposition recorded by the Court in light of the facts which are brought on record

by the defence side. The learned Magistrate, under aforesaid circumstances, has rightly concluded that there is no substance in the complaint. It is important to note that during the course of recording of cross-examination of the complainant, he was shown a cheque of Rs. 6000/ and he admitted that handwritings thereon are not his, but he admitted signature on the said cheque which he had given to the accused. Said cheque is exhibited in the evidence at exh.13. Complainant also accepted that he had never given any blank cheque to any one. It is satisfactorily established that the complainant had some private transactions with one private shroff and on one occasion, he realised the amount through that shroff. It is also brought on record that the complainant is prosecuted by the accused under sec.500 of I.P.Code in the year 1989 by

filing complaint which is registered as Cri. Case No. 1258/89.

The learned counsel appearing for the petitioner has relied on a decision reported in 1992 Cr.L.J.38, but looking to the nature of the case and opportunities given to lead the evidence to the complainant by the learned Magistrate during the span of about 11 1/2 years, in my view said decision would not help the petitioner complainant at all. It is also important to note that the criminal proceedings are going on since more than about 12 years resulting into a hanging sward over the head of the accused.

Learned counsel Mr. Dave appearing for respondent no.2 accused and ld. APP Mr. Mankad appearing for Respondent no.1 State has nothing to add.

Considering the facts and circumstances of the case and evidence on record before the learned Magistrate as discussed by him in the impugned order, I am satisfied that no illegality or perversity is committed by the learned Magistrate in discharging the respondent no.2 accused. Hence, I see no reason to interfere with the impugned judgment as the same being, just, legal and proper. There is, therefore, no substance in this Cri. Revision Application and the same is dismissed. The impugned judgment and order dated 7.4.1999 passed by the learned JMFC, Vadodara Cri.Case No. 707/87 is confirmed. Rule is discharged.

11.10.1999 [C.K. BUCH, J]

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